

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 297 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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LILAVANTIBEN ANIRUDHBHAI & ANOTHER

Versus

CHANDRAKANT BECHARLAL KATHRANI  
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Appearance:

MR DU SHAH for Revision -Petitioners  
MR AM DAGALI for MR YOGESH S LAKHANI  
for Revision -Opponent  
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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/07/2000

ORAL JUDGEMENT

This Civil Revision Application under Section 29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 ( for short " the Act"), filed by land-lady i.e. owner of the suit property and plaintiff

of Regular Civil Suit No. 123 of 1980, challenging the correctness, legality and propriety of the judgment Ex.27 dt. 30th June, 1988 rendered by Learned District Judge, Rajkot (who will be referred to hereinafter as " the Appellate Judge) in Regular Civil Appeal No. 123 of 1984 which was pending on his file. By rendering that Judgment, the Appellate Judge, by dismissing said Regular Civil Appeal No. 123 of 1984, confirmed the Judgment Exh.140 dated 30-06-1984 rendered by Judge, Small Causes Court, Rajkot (who will be referred to hereinafter as the learned Judge of trial Court) in Rent Suit No.123 of 1980.

2. Here in this Civil Revision Application, revision petitioner No.1 Smt Lilavatiben Anirudhbhai was not the plaintiff in Regular Civil Suit No. 123 of 1980. Revision Petitioner No.2 Bhanjibhai Bhojabhai who happens to be a father of revision petitioner No.1 had filed that Regular Civil Suit No. 123 of 1980 in his capacity as the rent collector for and on behalf of said land-lady. Revision opponent is the original defendant/tenant. For the sake of convenience, parties will be referred to hereinafter as the plaintiff and defendant respectively, and at appropriate stage, the owner of the property will be referred to as " the land-lady of the suit property".

3. The facts leading to this Civil Revision Application in a nut-shell are as follows:-

Land-lady Smt. Lilavatiben Anirudhbhai  
Lilavatiben Bhanjibhai is an owner of a building known as " Lilavila" situated in Street No.2, Laxmiwadi in Harischandra Plots in the city of Rajkot. The suit premises were let to defendant on monthly rent at the rate of Rs.84/- per month inclusive of House tax as well as Education Cess. It is the case of the plaintiff i.e. rent collector that defendant has become tenant in arrears of rent for more than six months, and that he has neglected to make payment of such rent due within one month from the date of suit notice. It is also case of the plaintiff/rent collector that defendant/ tenant has committed voluntary waste and acts contrary to Section 108(o) of the Transfer of Property Act and further that the defendant is guilty of conduct amounting to nuisance and annoyance to the neighbouring occupants, and therefore, the plaintiff addressed a suit notice dt. 26th September, 1979 and terminated the tenancy of the defendant. Defendant neither vacated the suit premises nor paid the arrears of rent, and therefore, the plaintiff/rent collector filed rent suit in the Court of the Small Causes Court at Rajkot. That suit came to be

registered as Rent Suit No. 123 of 1980. In that suit, the plaintiff/rent collector prayed for a decree of eviction of the suit property and also a money decree to recover Rs.1,662-50 Ps. together with notice charges.

In that suit, the defendant appeared and contested the suit by filing written statement at Ex.12, wherein he had denied practically all the pleadings of the plaintiff pleaded in the plaint. It was one of the main contentions of the defendant/tenant -firstly that Bhanajibhai Bhojabhai was not rent collector of the plaintiff and secondly that he has no right to file the suit as he is a mere rent collector. It is the case of the defendant that plaintiff had over-charged rent from him and that land-lady was liable to adjust the over-charged rent paid in the account of rent.

4. From pleadings of both the parties, learned trial Judge framed necessary issues at Ex.30. Both the parties led their oral as well as documentary evidence in the suit. After hearing the learned advocates of both the parties and after appreciating the evidence led by both the parties, learned trial Judge had come to a conclusion that suit in the present form, is not maintainable as the suit for eviction of suit premises is filed by the rent collector and not by an owner of the suit premises. The learned Judge of the trial Court, by rendering his judgment dt. 30th June, 1984, dismissed the suit of the plaintiff for eviction of suit premises mainly on the ground that suit for eviction of the suit premises can only be filed by the landlord i.e. owner and not by the rent collector. He was also pleased to fix the standard rent at the rate of Rs.30/- per month plus Rs.9/- per month as the fixed amount of taxes including the education cess. He was further pleased to pass a money decree to recover Rs. 2,691/- being an amount of total arrears of rent due till 30th June, 1984 in favour of the plaintiff. Still however, the learned Judge of the Trial court was pleased to hold that defendant is a tenant in arrears of rent for more than six months with effect from 1st October, 1978. Thus, he believed the case of the plaintiff falling under Section 12(3)(a) of the Act. He was further pleased to hold that defendant is not ready and willing to pay the rent. So far as other case of the plaintiff with regard to voluntary waste and acts committed by the defendant contrary to Section 108(o) of the Transfer of Property Act and case relating to conduct of defendant which amounts to nuisance and annoyance to the neighbouring occupants is concerned, the learned trial Judge was pleased to negative the said two cases of the plaintiff.

5. Being aggrieved against and dissatisfied with the judgment of the learned Judge of the trial court, the land-lady who was never the plaintiff in the suit before the trial Court and plaintiff/Rent Collector of the suit, both jointly filed Regular Civil Appeal No. 123 of 1984 in District Court at Rajkot. Looking to the cause title of memo of appeal, it transpires that original plaintiff/Rent Collector was shown as Appellant No.2, whereas the land-lady, who was never the plaintiff in the suit, was shown as Appellant No.1. The learned Appellate Judge, after hearing the arguments of the learned advocates of both the parties and after perusing record and proceedings of the suit and appreciating the evidence led by both the parties, by rendering judgment dt. 30th June, 1988, dismissed that appeal filed by aforesaid two appellants and thereby, he was pleased to confirm the judgment and decree passed by the learned Judge of the Trial Court.

6. Being aggrieved against and dissatisfied with the judgment dt. 30th June, 1988 of the learned District Judge, Rajkot rendered in Regular Civil Appeal No. 123 of 1984, the said two appellants have preferred the present Civil Revision Application.

7. As discussed earlier, the learned Judge of the trial court had given its clear finding that suit for eviction of suit premises was not maintainable as it was not filed by the land-lady as owner in its true sense. As per finding of the learned trial Judge, said suit was filed by the rent collector as defined in Sec. 5(3) of the Rent Act. The learned Judge of the trial court has placed reliance on full bench decision of this court rendered in case of NANALAL GIRDHARLAL AND ANR v. GUJLAMNABI JAMALBHAI MOTORWALA AND ORS. reported in 1973, 13 G.L.R. 880, wherein it is held that the extended meaning of the word " landlord" given in the definition of Section 5 sub-section (3) cannot be projected into Secs.12 and 13(1) of the Bombay Rent Act. The "landlord" referred to in sec. 12 and sec. 13 sub-sec.(1) is not a landlord as defined in Sec. 5 sub-sec (3), but a "landlord" who is entitled to possession of the premises on determination of the tenancy under the ordinary law of landlord and tenant. It was further held that a rent-collector is, therefore, not entitled to recover possession of the suit premises let to a tenant on the strength of the artificial definition of "landlord" given in sec.5 sub-sec. (3) of the Rent Act, and therefore, this court finds that the learned Judge of the trial court gave his finding with

regard to maintainability of the suit on the basis of aforesaid Full Bench decision of this court. During the course of argument in this Civil Revision Application, only point with regard to maintainability of the original suit was argued.

8. Shri D.U.Shah, the learned advocate for revision petitioner who is representing the land-lady and rent collector has vehemently argued that by filing an appeal in the District Court challenging correctness of the judgment delivered by the trial court, the landlady has ratified the act of rent collector, and therefore, when the learned Judge of the Trial Court accepted the case of plaintiff with regard to non-payment of rent for more than six months, the case of plaintiff with regard to Sec.12(3)(b) be accepted and decree be passed by setting aside the judgment of the Appellate Court.

9. Shri A.M.Dagali, the learned advocate for revision opponent has vehemently argued that simply by filing an appeal by the landlady with the plaintiff in the appellate court against the judgment of the trial court, it cannot be said that the landlady has ratified the act of rent collector. He submitted that either landlady should have filed a separate suit against the defendant or she ought to have made an application to the trial court to join her as one of the plaintiffs in the suit. Landlady has not chosen to adopt either of the way to contest the suit.

10. As per Oxford's Dictionary, ratify means to give formal consent and make official valid. If arguments of Shri D.U.Shah are accepted, then landlady orally gave consent to her rent collector to file a suit. She has not specifically stated anything on oath before the court that whatever suit is filed by the rent collector, may be treated as the suit filed by herself, and therefore, the argument advanced by Shri D.U.Shah, the learned advocate for revision petitioners cannot be accepted at this revisional stage.

11. It may be noted that the contention with regard to ratification of the act of rent collector by landlady has been taken by Shri D.U.Shah, the learned advocate for the revision petitioners, for the first time in this Revision Petition. This court has to only decide whether judgment of the appellate court "is according to law". The judgment rendered by the learned District Judge, Rajkot is according to law in view of the Full Bench Judgment rendered by this court as referred to hereinabove. No other contention is taken by Shri

D.U.Shah, the learned advocate for the revision petitioners.

12. When both the courts below have given concurrent and consistent finding with regard to maintainability of the suit, this court finds no interference to be made in concurrent and consistent findings arrived at by both the courts below. In case of CHAICHAND RATANSHI vs. LAXMISHANKER TRIBHOVAN, AIR 1981 SC 1690 wherein the Hon'ble Supreme Court held that where neither the findings of both the courts below are illegal, nor perverse nor erroneous, the High Court cannot justify in setting up a new case by substituting its own finding for the one reached by the courts below on a reappraisal of the evidence. When no contention was taken with regard to ratification of the act of rent collector, by the landlady before the Appellate Court, now no new case can be agitated before this court in this Civil Revision Application.

13. For the foregoing observations and discussions, the judgment and decree passed by both the courts below are found perfectly in accordance with law, and therefore, it does not call for any interference of this court. This Civil Revision Application is, therefore, devoid of merits and it deserves to be dismissed and accordingly same is dismissed. Rule is discharged, with no order as to costs.

Date: 4/7/2000. (H.H.MEHTA, J.)  
ccshah